Supreme Court, U.S.
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No. 70-5025

FRANCIS HAINES,

Petitioner,

vs.

OTTO J. KERNER, Former Governor, State of Illinois, et al.

Respondents.

PETITION FOR REHEARING

WILLIAM J. SCOTT,
Attorney General,
State of Illinois,

JOEL M. FLAUM,
First Assistant Attorney General.

JAMES B. ZAGEL,
Assistant Attorney General,
188 West Randolph Street,
Chicago, Illinois 60601,

WARREN K. SMOOT,
Assistant Attorney General,
Of Counsel.

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On March 8, 1971, this Court granted the petition for a writ of certiorari in this case and on January 13, 1972 reversed the judgment below. This Court concluded that:

> "Whatever may be the limits on the scope of inquiry of courts into the internal administration of prisons, allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the oportunity to offer supporting evidence. We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less

stringent standards than formal pleadings drafted by lawyers, it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). See Dioguardi v. Durning, 139 F. 2d 774 (CA2 1944).

Accordingly, although we intimate no view whatever on the merits of petitioner's allegations, we conclude that he is entitled to an opportunity to offer proof."

The focus of the Court's opinion is not clear as to whether it applies narrowly to the pleadings in the Haines case, or is a general principle to be applied in all *pro se* suits even when the pleadings are entirely devoid of facts. The Respondents request that the Court modify its opinion so that its effect is clearly limited to cases like the instant case. If a broad reading is given to Haines, that is, if nearly all *pro se* complaints require a hearing, the opinion will only serve to dilute the *pro se* litigant's right to judicial redress.

Prior to this Court's decision in *Haines*, federal law provided three avenues for processing inmate *habeas corpus* and civil rights actions. Initially, a *pro se* complaint filed in forma pauperis (as was Haines') could be commenced with appointed counsel or dismissed if "frivolous or malicious." 28 U.S.C. § 1915 (a) and (d). If a suit was properly commenced, either in forma pauperis or not, two procedures remained: (A) The cause could be dismissed upon either a motion to dismiss (after accepting all the allegations as true) or upon a motion for summary judgment—in either case the dismissal could occur lawfully only if the pleadings failed to state a constitutional violation; (B) If the pleadings did state a constitutional claim, the case would be resolved only after the plaintiff or petitioner had an opportunity to prove

the facts as alleged in a hearing. This triparte procedure was efficient and fair. Nonmeritorious claims could be resolved without trials while complaints alleging constitutional deprivations received a full hearing with the contingent opportunity for redress.

The opinion in *Haines* v. *Kerner*, —— U.S. ——, may fairly be read to create a fourth procedure. Now, a *pro se* inmate is entitled to a trial, perhaps by a jury, even though his allegations, per se, do not state a constitutional deprivation. This step is unnecessary and improvident. The Respondents are acutely aware that State prisoners should have the opportunity to air their grievances before the courts and be given a full opportunity for redress of constitutional deprivations.[1] However, the former system provided this opportunity without the unwarranted burden on the legal process that the *Haines* opinion seemingly will create.

The opinion in *Haines* provides a rationale that may abolish the motion to dismiss in *pro se* suits. This result is unwarranted. Inmates who are serious in their claims of constitutional deprivations have ample opportunities to perfect their pleadings and to be heard without the benefit of the broad dictum in *Haines*.

Pro se inmates have adequate alternatives to aid and protect their voice before the courts. It is within the district judges' discretion to appoint free counsel. Or, the inmate may seek the aid of the many and increasing legal services available to inmates within the various states

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1. In fact, Haines took full advantage of his opportunity to plead sufficient facts to state a constitutional violation by filing two separate answering briefs to the State's Motion to Dismiss in addition to numerous other pleadings.

including Illinois. And most importantly, the pleadings of *pro se* litigants are liberally construed by the courts, redress being available upon an allegation of facts stating a constitutional violation. Lastly, the inmate has the opportunity to file an unlimited number of complaints or petitions in an attempt to state his cause of action. It should also be noted that the inmate who fails to plead properly is usually informed by the respondents' motions to dismiss as to what his pleading lacks.

In view of the alternatives available to state prison inmates seeking judicial relief for their grievances, there is no need to permit an inmate a trial if he has not initially stated a constitutional violation. When a balance is struck between judicial administration and providing prison inmates a fair chance to be heard, the *Haines* opinion creates an unmerited imbalance.

Perhaps we are misreading this Court's opinion in *Haines*. Perhaps the District Court still has the right to satisfy itself that the claim is substantial before it must conduct a hearing. See *Carey* v. *Settle*, 351 F. 2d 483, 484-485 (8th Cir. 1965); *Bethea* v. *Crouse*, 417 F. 2d 504 (10th Cir. 1969). But it appears to us that the opinion states that no matter how vague or conclusory a pleading may be, no matter how devoid of specific facts—the District Court must hold a hearing unless "it appears that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief". Simply stated, if the plaintiff could prove facts (whether or not alleged) to support his claim—a hearing must be held. We doubt that any claim is dismissable under this standard. What court can say that there is no possibility that a particular plaintiff could not prove hitherto unpleaded facts to support a claim such as "cruel and unusual punishment" or "denial of due process".

Lastly, a broad reading of *Haines* will serve neither the cause of improving prison administration nor the cause of administering justice to those with valid claims. Permitting an inmate to gain a hearing or trial without first requiring that he state a cause of action will subject the District Courts to an endless increasing stream of frivolous and repetitive lawsuits by restless, malcontented, vindictive or ignorant inmates.

Every court including this one that has a heavy workload has recognized that, if a substantial part of its cases lack merit, its capacity to deal with worthy causes is diminished. In 1967 approximately 1,600 "prisoner civil rights" cases were filed by state prisoners. In 1970 the number had grown to about 2,700 to which must be added about 850 similar petitions from federal prisoners. The approximate number of state prisoner civil rights cases for 1971 is 4,000. It is beyond dispute that the vast majority of these cases are meritless. Indeed, except for a few class actions seeking general revisions in state prison procedures,[2] nearly all these cases involve personal grievances that ought to be resolved in a small claims court. In cases under 28 U.S.C. 1331 (where the plaintiff must allege the minimum amount in controversy) the experience has been that incredible damage claims are routinely made. The petitioner here asked for damages of one-half million dollars. It seems clear to us that no court can give proper and wholehearted attention to arguable claims when they are hidden in a flood of the frivolous.

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2. These cases do not usually present substantial problems for hearings since the facts are generally not in dispute.

The Respondents submit that even an adverse decision on the merits would have been better in the long run than the broad ruling this Court apparently entered. Rulings on merits can be complied with and new procedures for discipline can be devised to meet new requirements. Once this is done, prison officials can turn from litigation to prison administration.

The present effect on the prison administration will be to cause the division of badly needed manpower from prison functions to the courthouse for hearings. Administrative actions within the prison will be taken not only on the basis that they are right but upon the basis that they are necessary so that the waste of correctional resources necessary to defend the actions are outweighed by necessity. The constant threat of trial and hearing in every case does not promote reform; it promotes inaction.

CONCLUSION

For the foregoing reasons, the Respondents respectfully request that the Court grant the Petition for Rehearing of this case.

Respectfully submitted,

WILLIAM J. SCOTT,
Attorney General,
State of Illinois,
JOEL M. FLAUM,
First Assistant Attorney General,
JAMES B. ZAGEL,
Assistant Attorney General,
188 West Randolph Street, Suite 2200,
Chicago, Illinois,

WARREN K. SMOOT,
Assistant Attorney General,
Of Counsel.